

Remarks

Claim 39 remains in the case. Claims 44-47 have been added. These claims are directed to specific mixtures with specific minimum quantities of each component of the mixture, one directed to a canine and the other to a feline.

The cancellation of claims 40-43 renders moot the rejection under 35 USC 112.

Claim 39 covers one or more of specifically named antioxidants for the purpose of inhibiting the loss of learning ability or increasing the learning ability of an aged companion pet in need of such treatment.

Claims 44-47 limit claim 39 in the manner aforestated.

Claim 39 has been rejected under 35 USC 102, lack of novelty, over each of Harper, Hamilton, and Ames, individually on the basis of inherency. Harper discloses the use of Vitamin E alone or together with Vitamin C for overcoming a problem (condition) having a component involving oxidative stress. Among the conditions having that component listed in Harper in a sentence having 12 conditions is aging. Older dogs are treated in Example 19 with Vitamin E. In none of the disclosed passages of Harper is there any mention of changing learning ability. Nor is there any mention that the target animals were in need of such prevention or treatment. There is no indication that loss or need of increased leaning ability is always present in aging. All these aspects must be shown to have a proper inherency rejection. None of them are present here. Additionally, at least two other components must be present with the Vitamin E and C in claims 44 and 46, alpha lipoic acid and l-carnitine. Neither is mentioned in Harrison. Anticipation of all remaining claims is absent.

The rejection over Hamilton is also absent for the same reasoning. Hamilton discloses the treatment of cognitive disorders particularly those associated with aging using a combination of lipoic acid and l-carnitine. Among those mentioned is memory loss. But, this is specifically associated with individuals having unhealthy mitochondria, see col. 7, lines 14-17, areas which are specifically associated with lipoic acid, used in association with l-carnitine in Hamilton. There is nothing in Hamilton which associates memory loss and unhealthy mitochondria with the prevention or treatment of dogs and cats for increasing learning ability or inhibiting loss of learning ability in those dogs and

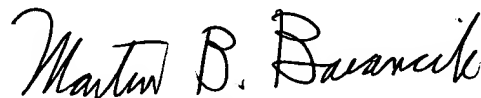
cats who need it. There is no claiming of lipoic acid in claims 45 and 47 directed to felines. Vitamin E and C must be present in claims 44-47 as well. Clearly all the remaining claims in this specification are novel over Harrison.

The remaining 102 rejection is over Ames. This reference is very similar to the Harrison disclosure. There is nothing which always links ordinary ageing with the ability to learn. There is nothing which links mitochondrial weakness with the loss of or inhibition of learning ability in those animals which are in need of said treatment. This certainly applies specifically to claims 44-47 and particularly claims 45 and 47 which do not even claim lipoic acid. Inherency is absent.

The canceled claims 42-43 were rejected over Hamilton or Ames and claims 40-41 over Harper for obviousness on the basis that "effective amounts are necessary to the treatment of disorders/symptoms associated with aging" and "it would have been obvious to further modify the disclosed art dosages so they are effective to improve "mental acuity" or treat or inhibit "oxidative stress" (Harper) or symptoms associated with ageing in animals (Harrison)". There is no disclosure in any of Harper, Harrison or Ames which associates any of those disclosures with this application's claimed change in learning ability in a canine or feline in need of said treatment. The remaining method of use claims particularly 44-47 are non-obvious over the prior art.

Whereupon the applicants by their attorney request the allowance of the specification and pendant claims.

Respectfully submitted,



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